

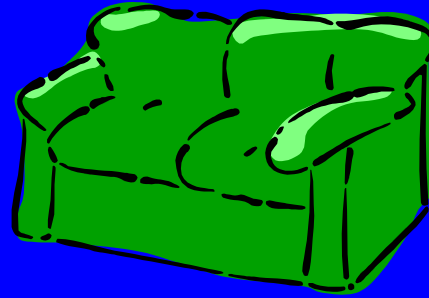


The US SOFA with South Korea (FKDC-SA)

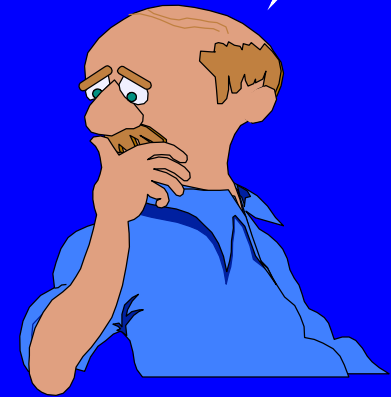


THE “SOFA”

Not a *couch* . . .



But a
fundamental
international
agreement
between allies



Oh
really

?





US-ROK STATUS OF FORCES AGREEMENT (SOFA)

- Implements Mutual Defense Treaty of 1953
 - Core agreement in which ROK granted US right to “dispose land, air and sea forces” in Korea to “deter armed attack”
- Our basic stationing agreement
 - *Executive Agreement* governing most aspects of stationing US military forces in Korea
 - Supersedes relevant domestic law of both nations
 - Entered into force in 1967 after protracted negotiations



BASIC PURPOSES OF SOFA

- Defines legal rights and obligations of both governments (i.e., “status of forces”)
- Provides “facilities and areas” for use by US forces for purposes of Mutual Defense Treaty
- Balances basic rights of US citizens with obligation to respect Korean law
- Ensures supportive environment for allied forces (i.e., provides US “quality of life”)



SOFA STATUS



- US Military while in the ROK
- US Civilian Component:
 - US Civilians in “employ of”, “serving with”, or “accompanying” US armed forces (not “ordinarily resident” in Korea) and Technical Representatives
- Invited Contractors
- Dependents of the above
- (Those assigned to JUSMAG-Korea and the American Embassy are covered by separate



CRIMINAL JURISDICTION

- Exclusive:
 - Security Offenses
- Concurrent:
 - US Military Primary Jurisdiction:
 - Offenses solely against property or security of US
or involving SOFA status victim
 - Official Duty Cases
 - ROK Primary Jurisdiction:
 - **ANY OTHER OFFENSE**



WAIVER OF PRIMARY JURISDICTION

“ The (ROK), recognizing that it is the primary responsibility of the (US) military authorities . . . to maintain good order and discipline . . . will, upon request . . . waive their primary right to exercise jurisdiction . . . except when they determine that it is of particular importance that jurisdiction be exercised by the (ROK).”



RIGHTS OF ACCUSED PERSONS (Article XXII)



- To have a speedy trial
- To be informed in advance of the charges
- To confront the witnesses against him/her
- To have compulsory process for favorable witnesses
- To have legal representation of choice
- To have a competent interpreter
- To communicate with a US representative and have a US representative (trial observer) present at trial



MORE BASIC RIGHTS



- To appeal a conviction or sentence
- To receive credit for pretrial confinement
- To not be held guilty of an offense which did not exist at the time offense committed
- To not receive heavier penalty than applicable when offense committed or adjudged by initial trial court
- To not be held guilty on basis of evidence rules or requirements of proof altered to prejudice since offense



AND MORE RIGHTS . . .



- Right against self-incrimination
- Right against cruel and unusual punishment
- To **not** be prosecuted or punished by legislative/executive act
- Right against **double jeopardy**
- To **not** stand trial if not physically or mentally competent to participate in defense
- To appear in appropriate military or civilian attire
- Rights against **involuntary confessions/torture**



1988-91 SOFA Revision

Criminal Jurisdiction:

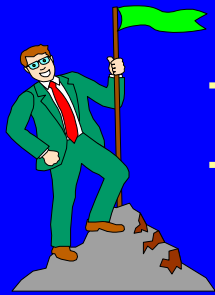
- Eliminated “*automatic waiver*” of jurisdiction
- Eliminated list of offenses of “*particular importance*;”
- Required US Representative to be present during questioning of suspects
- Required “official duty” decisions by general officer



1995-2001 SOFA Revision

- Criminal Jurisdiction: ROK may receive:
 - custody upon indictment in serious cases;
 - and retain custody upon arrest in some of the most serious murder or rape cases (yet to be defined);
 - in exchange for significant due process rights for accused US personnel in ROK pretrial confinement





Facilities and Areas

- **Article II:** Grants US “*use*”, not ownership
 - Those in use when SOFA went into effect (1967); also provides for future agreements
 - Must be returned when no longer needed
 - Annual review required; ROK requests at any time
 - Replacement facilities
- **Article III:** US may “take all measures necessary for their **establishment, operation, safeguarding and control**”



Facilities and Areas

- **Article IV:** When returned . . .
 - US not required to restore to original condition
 - ROK not required to pay for improvements
 - Each may take “removable” items they paid for
- **Article V:** Cost and Maintenance
 - US bears cost of maintenance of forces, *except*
 - ROK to furnish **without cost** all facilities and areas, including rights of way, granted in Article II; **must compensate land owners**



Environmental Protection (*New*)

(Article III, Agreed Minutes, New Paragraph 2)

- US and ROK governments recognize importance of environmental protection
- USG commits to implement SOFA consistent with protection of environment and health and confirms its policy to *respect* relevant ROK environmental laws
- ROKG confirms its policy to implement its environmental laws with regard for health and safety of US personnel



Environmental Protection

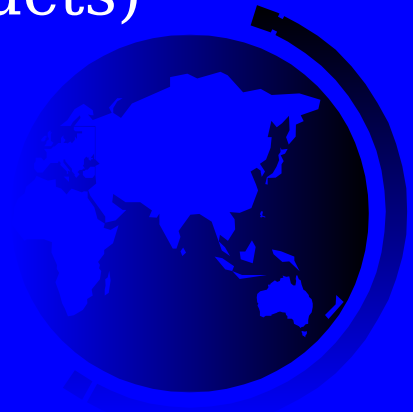
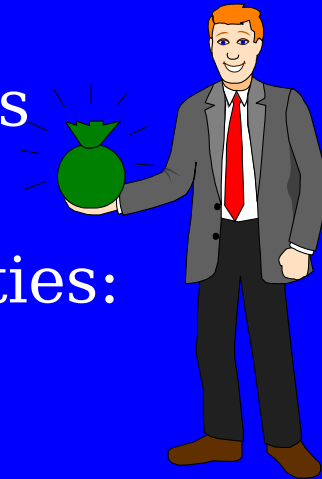
(2001 Memorandum of Special Understandings)

- US-ROK to cooperate on environmental governing standards
- US-ROK to share information and provide for appropriate access to USFK facilities & areas
- US-ROK to consult on risks *and* USG confirmed its policy to conduct environmental performance assessments; ROKG confirmed its policy to respond to outside contamination sources that endanger health
- Environmental and relevant SOFA Subcommittees to meet regularly to discuss environmental issues



SOFA PRIVILEGES

- Exempt from ROK Income Taxes
- Exempt from ROK Customs Duties:
 - Commissary (US Foodstuffs)
 - PX/BX & NAF Activities (US Products)
 - Duty Free Import
 - PCS Household Goods (up to 6 months)
 - APO (Reasonable Quantities)
 - POV
- Military Mail (APO)

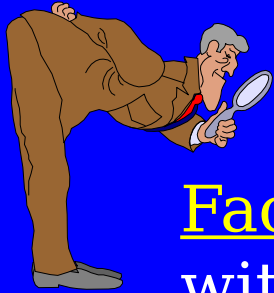


Control of Duty-Free Goods

- Except as mutually agreed, “goods imported into the (ROK) free of duty shall **not** be disposed of (in Korea) to persons not entitled to import such goods free of duty”.
- USFK required to “take such steps as are necessary to prevent abuse of privileges . . .”



Other 1988-91 SOFA Revisions



Facilities and Areas: Required annual review with a view towards returning unneeded facilities and areas

Nonappropriated Fund Organizations (NAFO): USFK to use “*reasonable and practical*” means to control access to clubs and recreational facilities by unauthorized persons

Labor: Korean employee labor practices must be in “*substantial agreement*” with ROK Labor law; agreed to joint review of removals

Plant Quarantine: Agreed to negotiate plant

Other 1995-2001 SOFA Revisions

- Guaranteed preferential hiring of Korean employees in exchange for allowing dependents of US military and civilian component to obtain jobs on ROK economy (w/o giving up SOFA A-3 visa)
- Agreed that minor traffic offenses involving military members or the civilian component resulting in property damage only will not be reported as a crime if covered by the Claims article or adequate insurance
- Streamlined mediation procedures for Korean labor disputes, using ROK Labor Relations Commission



1995-2001 SOFA Revision

- Agreed to “joint inspections” of animal and plant products brought into Korea for USFK use, under procedures to be established by Joint Committee
- Agreed to stronger measures to protect USFK facilities and areas from civilian encroachment
- Agreed to notify & consult regarding new construction
- Adopted civil process procedures for private lawsuits vs. US personnel



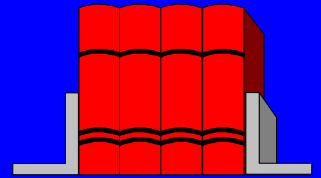
Delegation Recommendations

- Non-Appropriated Fund Organizations (NAFO) “Record of Discussions”:
 - Reconfirmed US commitment that only qualified persons may use NAFO facilities
 - Recommended Joint Committee conduct review to determine who may use NAFO facilities, the conditions of that use, and the appropriate means of assuring compliance
 - Recommended revision of 25 June 81 agreement regarding “Membership in the USFK Club System” by 31 Dec 2001



LAND

SOFA ARTICLES



I	Definitions
II	Facilities & Areas: Grant and Return
III	Facilities & Areas: Security Measures
IV	Facilities & Areas: Return of Facilities
V	Facilities & Areas: Cost and Maintenance
VI	Utilities and Services
VII	Respect for Local Laws
VIII	Entry and Exit
IX	Customs
X	Access of Vessels and Aircraft
XI	Meteorological Services
XII	Air Traffic Control and Navigation Aids
XIII	Non-Appropriated Fund Organization
XIV	Taxation
XV	Invited Contractors

BUILDINGS

UTILITIES

VISAS

CUSTOMS

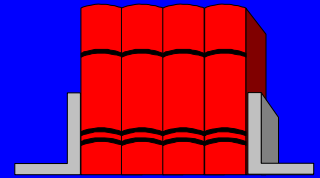
TAXES

CLUBS

**NAV
AIDS**

LABOR

SOFA ARTICLES



- | | | |
|--------|--|----------------|
| XVI | Local Procurement | LOCAL PURCHASE |
| XVII | Labor | |
| XVIII | Foreign Exchange Controls | |
| IXX | Military Payment Certificates (no longer used) | |
| XX | Military Post Offices | |
| XXI | Accounting Procedure | |
| XXII | Criminal Jurisdiction | MAIL |
| XXIII | Claims | |
| XXIV | Vehicles and Driver's Licenses | CLAIMS |
| XXV | Security Measures | |
| XXVI | Health and Sanitation | |
| XXVII | Enrollment and Training of Res | LICENSES |
| XXVIII | Joint Committee | |
| XXIX | Entry Into Force of Agreement | |
| XXX | Revision of Agreement | HEALTH |
| XXXI | Duration of Agreement | |



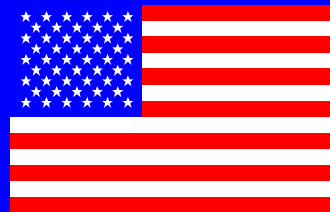
So fah, . . . so good!

SOFA

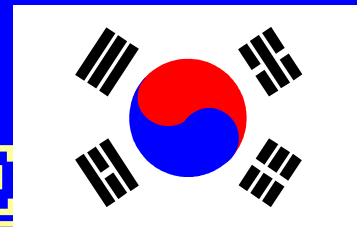
ARTICLE XXVIII

“ A Joint Committee shall be established as the means for consultation . . . on all matters . . . regarding the implementation of this Agreement.”





US-ROK SOFA JOINT COMMITTEE



US Representative
Deputy Commander,
USFK

ROK Representative
Director General, North American
Affairs Bureau, MOFAT

- Substantive issues tasked to standing or ad hoc subcommittees for recommendation (may include negotiations in Joint Working Group)
- Issues may be raised by either side
- US/ROK Reps often take “exigent action” between meetings
- Joint Committee Minutes record binding agreements, positions



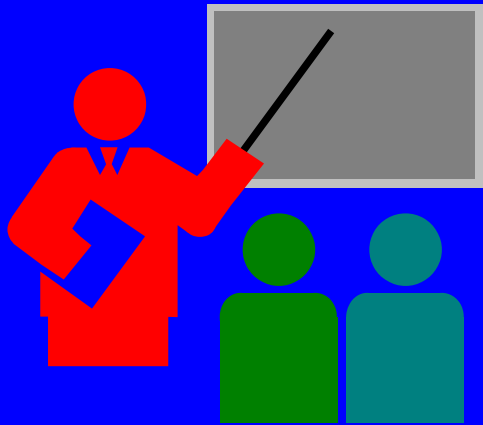
CURRENT ISSUES



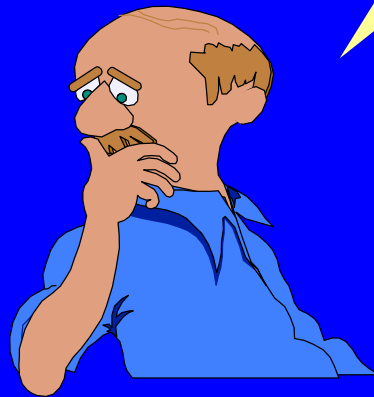
- Revised SOFA Implementation
 - Environmental Cooperation
 - Management of facilities & areas; new construction
 - Joint Inspection Procedures (Plant Quarantine)
- Burdensharing (Special Measures Agreement)
- Land Partnership Plan (LPP)
 - Encroachment/Land Use
 - Facility Relocations
 - SOFA Grants for Facilities and Areas
 - Housing



**SO, AS YOU CAN SEE,
THERE IS MORE TO THIS
“SOFA” BUSINESS THAN
ONE MIGHT THINK!**



**Still sounds like
a pretty “cushy”
job to me!**





Office of the US SOFA Secretariat
HQ USFK (FKDC-SA)

Unit # 15237

APO AP 96205-0010

Phone: 723-6046/3417; Fax: 723-4403

E-Mail: MountsR@usfk.korea.army.mil

